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No. 00-921

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

ILLINOIS BELL TELEPHONE CO.,

Petitioners,

v.

WORLDCOM TECHNOLOGIES, INC., *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

SUPPLEMENTAL OPPOSITION OF RESPONDENTS WORLDCOM TECHNOLOGIES, INC., MCI WORLDCOM NETWORK SERVICES, INC., AND MCIMETRO ACCESS TRANSMISSION SERVICES LLC

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SUPPLEMENTAL OPPOSITION OF RESPONDENTS WORLDCOM TECHNOLOGIES, INC., MCI WORLDCOM NETWORK SERVICES, INC., AND MCIMETRO ACCESS TRANSMISSION SERVICES LLC

Respondents WorldCom Technologies, Inc., MCI WORLDCOM Network Services, Inc., MCImetro Access Transmission Services, Inc. (collectively "WorldCom"), through undersigned counsel, submit this supplemental brief in opposition to the petition for writ of certiorari filed by Illinois Bell Tel. Co. d/b/a Ameritech Illinois ("Ameritech") and in support of the decision of the United States Court of Appeals for the Seventh Circuit in *Illinois Bell Tel. Co. v. WorldCom Techs.*, 179 F.3d 566 (7th Cir. 1999).

ARGUMENT

Ameritech sought a writ of certiorari from the Court on "[w]hether a claim that a state commission determination concerning the rights and obligations of the parties to a section 252 agreement deviated from the plain terms of that agreement lies within the scope of federal jurisdiction under section 252(e)(6)." (Amer. Pet. at i (corrected version).) For the reasons previously discussed by WorldCom in the January 16, 2001 Response in Opposition of Respondents WorldCom Technologies, et al. ("WorldCom Resp."), this Court should deny Ameritech's petition for writ of certiorari. There is no genuine circuit split on that question; these issues are still working their way through several circuit courts, including the Sixth, Ninth, and Eleventh Circuits; and the Seventh Circuit correctly resolved the question Ameritech presented. (*See generally* WorldCom Resp.) In addition, WorldCom's briefs filed in *Mathias v. WorldCom Techs.*, 535 U.S. __, No. 00-878,

slip op. (May 20, 2002), and *Verizon Maryland, Inc. v. MCI WorldCom, Inc.*, 535 U.S. __, Nos. 00-1531, 00-1711, slip. op. (May 20, 2002), discussed this issue exhaustively.

More specifically, the three circuits that have expressly considered the question have each ruled that state law governs the interpretation of negotiated interconnection agreements. *Southwestern Bell Tel. Co. v. Brooks Fiber Communications*, 235 F.3d 493, 497-99 (10th Cir. 2000); *Southwestern Bell Tel. Co. v. Pub. Util. Comm'n*, 208 F.3d 475, 485 (5th Cir. 2000); *Illinois Bell Tel. Co. v. WorldCom Techs.*, 179 F.3d 566, 574 (7th Cir.1999), *cert. dismissed sub nom., Mathias v. WorldCom Techs.*, 535 U.S. __, slip op. (May 20, 2002). In addition, two other circuits have concluded in similar decisions that questions regarding the interpretation of negotiated interconnection agreements arise under state law, not federal law. *BellSouth Telecommunications, Inc. v. MCImetro Access Transmission Servs.*, 278 F.3d 1223, 1242 (11th Cir. 2002), *petitions for rehearing pending*; *Bell Atlantic Maryland, Inc. v. MCI WorldCom, Inc.*, 240 F.3d 279, 297 (4th Cir. 2001), *vacated and remanded on other grounds sub nom., Verizon Maryland, Inc. v. Pub. Serv. Comm'n*, 535 U.S. __, Nos. 00-1531, 00-1711, slip op. (May 20, 2002). The Sixth, Ninth, and Eleventh Circuits have pending cases that will address this issue in those circuits. *See Michigan Bell Tel. Co. v. MFS Intelenet*, No. 99-1996 (6th Cir.); *Verizon Northwest, Inc. v. WorldCom, Inc.*, No. 01-35332 (9th Cir.); *BellSouth*, 278 F.3d 1223 (11th Cir. 2002), *petitions for rehearing pending*.

Ameritech attempts to manufacture a split on this question by arguing that the Federal Communications Commission ("FCC") in *Starpower Communications, LLC v. Verizon South Inc.*, File No. EB-00-MD-19, Mem. Op. & Order, FCC 02-105 (rel. Apr. 8, 2002) (*Starpower II*), held that questions regarding

the interpretation of interconnection agreements arise under federal law. At the outset, Ameritech's claim that *Starpower II* justifies a grant of certiorari is premature, as the FCC's decision recently has been appealed to the United States Court of Appeals for the District of Columbia Circuit, *Starpower Communications v. FCC*, No. 02-1131 (D.C. Cir.) (appeal filed Apr. 16, 2002). In any event, nowhere in *Starpower II* does the FCC find that questions regarding the interpretation of interconnection agreements are governed by federal law. Indeed, in both *Starpower II* and another recent decision, *Cox Virginia Telcom, Inc. v. Verizon South Inc.*, File No. EB-01-MD-006, Mem. Op & Order, FCC 02-133 (rel. May 10, 2002) ("*Cox Telcom*"), the FCC expressly has concluded that state contract law principles govern the interpretation of negotiated interconnection agreements. As the FCC stated:

> In interpreting the interconnection agreements at issue in this case, we stand in the shoes of the Virginia SCC. We agree with the parties that Virginia law supplies the applicable rules of contract interpretation.

Starpower II ¶ 24; *see also id.* ¶ 23; *accord* Cox *Telcom* ¶¶ 20-21, 27 n.85. The FCC similarly rejected the same arguments under the Fourth Circuit's decision in *AT&T Communications of S. States, Inc v. BellSouth Telecomms.*, 223 F.3d 457 (4th Cir. 2000),that Ameritech makes here. *See Starpower II* ¶¶ 46, 48; *see also Cox Telcom* ¶¶ 24, 26.

For all the other reasons why Ameritech's petition should be denied, WorldCom respectfully refers the Court to its previously-filed Response and to the briefs it has filed in both

Verizon Maryland, Inc. v. Pub. Serv. Comm'n, Nos. 00-1531, 00-1711, and *Mathias v. WorldCom Techs.*, No. 00-878.

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